

REMARKS

In the Office Action, claims 1-44 were rejected. By the present Response, claims 35 and 40 are amended. All the claims are believed to be in condition for allowance. Reconsideration and allowance of all pending claims are requested.

Rejections Under 35 U.S.C. § 112

The Examiner rejected claims 1-6 and 20-24 under 35 U.S.C. §112 as being indefinite. Particularly, the Examiner cited recitations regarding the fact that a “question is designed to determine” certain information. Applicants first note that the Examiner likely intended to reject claim 19 under this section, as it first refers to questions designed to elicit certain information. Moreover, the particular wording cited by the Examiner is not found in any of the claims, although the claims do include similar recitations.

The Examiner’s point appears to have been that the terminology is unclear because “[i]t is unclear to the Office how the Applicant is determining’ the desired answers from the user.” *See*, Office Action, page 2.

Applicants point out to the Examiner that none of the claims recites that the system determines desired answers from the user. Rather, the claims require that a plurality of questions be presented that are designed to establish certain user preferences and data. The questions, themselves, are designed to determine certain information. The information is, of course, gleaned from the answers provided by the user. Applicants see no grammatical, syntactic or content difficulty in understanding this language.

The types of questions and the manner in which information is gleaned from these questions is found throughout the application. For example, the Examiner may refer to the many questions and typical answers provided on pages 7 and 8 of the application. All of these questions can clearly be answered by a knowledgeable user, and can serve as the basis for determining the type of information elicited.

In short, because Applicants believe that the terminology used in the cited claims is exceedingly clear and explicit, and serves the purpose of notifying those skilled in the art of the appropriate scope of the claimed subject matter, Applicants submit that the claims are in conformance with 35 U.S.C. §112. Reconsideration of the claims and withdrawal of the rejection are therefore requested.

Rejections Under 35 U.S.C. § 103

All of the independent claims 1, 19, 35 and 40 were rejected in view of a combination of three references, Tavor et al. (U.S. Patent No. 6,070,149, hereinafter “Tavor”) in view of Henley (Published U.S. Application No. 2002/0065758, hereinafter “Henley”) and Bui et al. (U.S. Patent No. 6,830,549, hereinafter “Bui”). As best understood, the Examiner applied the references as follows. Tavor is said to provide virtually all of the elements of the independent claims. Henley was cited merely for teaching “selling medical products or services on line.” *See*, Office Action, page 3. Bui appears to have been cited only for the proposition that “an AM system with a data recorder can be purchased.” *Id.*

The Examiner then concluded that it would have been obvious to combine the teachings of the various references to include in the Tavor system the sale of a medical device such as an ambulatory monitoring system as taught by Henley and Bui “because it greatly improves the convenience of the system by providing the user with a medical device that is widely used and has many different models, which a user would need help in determining which system to purchase [sic].” *Id.* at page 4.

Applicants submit that the Examiner has done no more than cobble together the teachings of three completely unrelated references with no reasonable basis for their combination other than the recitations of the pending claims. Applicants first note that claims 35 and 40 have been amended by this Response to include recitations similar to those of claim 1 regarding the particular information elicited by

the template that is presented to the user. Claims 1, 19, 35 and 40, then, are quite specific in relating to eliciting information used as the basis for selection or recommendation of an ambulatory monitoring system.

Tavor provides an on-line tool for selling products. No specific information or teaching is provided in Tavor as regards specific questions or queries that might be issued to the user for the selections made. Indeed, the Examiner did not argue that Tavor provides such teachings. Rather, the Examiner would have Tavor combined with Hendley for the mere fact that Henley relates to medical services. Applicants note that Henley does not appear to ask a user any detailed question whatsoever regarding any particular product. Rather, the Hendley system is apparently intended to allow browsing by a user, with a bidding or inverse-type bidding system. Accordingly, no recommendation whatsoever is provided by Hendley for any product or service. Because no such recommendation is made, no query is advanced by Hendley that provides any detailed information whatsoever, other than a generic search query. Applicants submit that this type of search query is well known in the art, and in no way can be extended to the type of detailed information elicited for recommendation of an ambulatory monitoring system as claimed.

The Bui reference is a very detailed exposition on an ambulatory monitor. As noted above, the Examiner's use of Bui is only for the purpose of demonstrating that an ambulatory monitoring system can be sold. Actually, no mention of this fact was found in Bui. Applicants, however, do not contest the simple fact that a market exists for ambulatory monitors. However, Bui provides no teaching whatsoever regarding how such systems are sold. Indeed, Bui would not even suggest to one desirous of combining the teachings of Tavor with those of Hendley that the types of information elicited according to the pending independent claims could or should be considered in the sale of an ambulatory monitoring system.

At its base, the Examiner's position appears to be that Tavor teaches an on-line sales tool, Hendley teaches something related to medical devices and services, and Bui teaches something related to monitoring systems. Based upon the pending claims, then, the Examiner concludes that these references may, in some way, be combined to sell an ambulatory monitoring system on-line. Applicants submit that the Examiner's position is simply inadequate to establish a *prima facie* case of obviousness. The Examiner is reminded that the mere fact that the teachings of certain references *can* be combined does not establish a *prima facie* case of obviousness.

Applicants submit that the sale of ambulatory monitoring systems is unlike the sale of other generic products on-line. Ambulatory monitoring systems are not ordered as one might order books or clothing. They require specific detailed information regarding the nature of the use of the system, and so forth. Hence, on-line tools have traditionally not been used for the sale of such products. Applicants submit, then, that the Examiner's piecemeal application of Tavor, Hendley and Bui is simply insufficient to establish the requisite motivation to combine the references, and can only be based upon inappropriate hindsight given the specific recitations of the pending claims.

Applicants further submit that, even if combined, the references fail to teach the eliciting of the specific types of information spelled out in the claims. Tavor, of course, does not do so in that its very nature is so generic as to be complete unrelated to ambulatory monitoring systems. Hendley certainly does not do so inasmuch as it is essentially related to the utilization of services by medical service providers, and no specific information appears to be elicited at all. Bui, finally, also fails to provide any teaching whatsoever regarding how and on what basis a patient may select a particular ambulatory monitoring system to the exclusion of others. Thus, even if

combined, the references would entirely fail to teach or suggest the recitations of the independent claims relating to the types of information sought from a user.

Given the shortcomings of the references and their combination, Applicants submit that a *prima facie* case of anticipation has not been made out against at least independent claims 1, 19, 35 and 40. To the extent that other claims were rejected on the basis of this combination, or on the basis of other combinations that ultimately rely upon this combination, all of the dependent claims are believed to be patentable at least by virtue of their dependency from an allowable base claim.

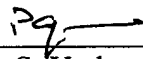
Reconsideration and allowance of all pending claims are earnestly solicited for the foregoing reasons.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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